

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

GERALD HOLLOWELL, JR.,

Defendant-Appellant.

UNPUBLISHED

November 22, 2011

No. 298900

Oakland Circuit Court

LC No. 2009-229090-FH

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

MEMORANDUM.

After a jury trial, defendant appeals by right his conviction of carrying a dangerous weapon with unlawful intent, MCL 750.226. We vacate the conviction, because the conviction is contrary to the holding in *People v Parker*, 288 Mich App 500, 509; 795 NW2d 596 (2010).

When a prosecutor specifies in the charging information that the defendant was carrying a knife with unlawful intent under MCL 750.226, the prosecutor must prove that the knife's blade was more than three inches long. *Parker*, 288 Mich App at 509. Here, as in *Parker*, the knife was admitted into evidence, but there was no testimony concerning the knife's blade length. According to the *Parker* holding, the evidence in this case was insufficient for a rational juror to find that the knife at issue had a blade greater than three inches.

The prosecutor contends on appeal that the law of the case precludes application of the *Parker* holding. We disagree. This Court's order reversing the dismissal of charges did not establish the law of the case with regard to the knife's blade length. *People v Hollowell*, unpublished order of the Court of Appeals, entered September 18, 2009 (Docket No. 292200). The order merely recognized that the prosecutor had presented probable cause to bind defendant over for trial on the charged offenses. See *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006). Nothing in the order declared that the evidence was sufficient to establish the elements of the charged offenses beyond a reasonable doubt.

Conviction vacated and remanded for correction of the judgment of sentence with respect to the vacated conviction. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell